

(1982) 07 GAU CK 0004

Gauhati High Court

Case No: Civil Revision No. 185 of 1982

Smt. Kalyani Ghose

APPELLANT

Vs

Dr. Bhabani Charan Banerjee
and Another

RESPONDENT

Date of Decision: July 30, 1982

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 32 Rule 1, 115

Citation: AIR 1983 Guw 65

Hon'ble Judges: K.M. Lahiri, J

Bench: Single Bench

Advocate: S.N. Medhi and B. Devi, for the Appellant; B. Sarma and A.C. Sarma, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Lahiri, J.

This application u/s 115 of the Civil P. C. is by one of the co-defendants against the order passed by the Asst. District Judge, Gauhati, rejecting the application of the petitioner made under Order 32, read with Section 151 of the Civil P. C. for short "the Code".

2. The plaintiff filed the ejectment suit. It is stated by Mr. B. Sarma, counsel for the plaintiff opposite party that in the ejectment action the defendants had already taken the matter to the Supreme Court in Special Leave to Appeal (Civil) No. 21116 of 1980 against the judgment and order dated 18-1-1980 passed by this High Court in Civil Revn. No. 154 of 1979. However, the same was rejected by the Supreme Court. Learned Counsel for the petitioner however submits that the petitioner was minor at that time, but at the same time he concedes that the proceedings were so taken to the Supreme Court via this Court, Therefore, the first round of "our long

distance litigation" is already over. The second round is about to begin.

3. The petitioner (defendant No. 9) filed an application under Order 32 read with Section 151 of "the Code" claimed that she had attained majority and supplicated to the court to permit her to file written statement which naturally meant a fresh "take off" of the proceedings though it has reached the stage of argument. In short, if her prayers are allowed the suit posted for hearing argument would take years to conclude, However, this cannot stand in the way of granting the relief if the ends of justice demands,

4. The Court below on materials made available to it held that the petitioner had failed to establish that she had attained majority and accordingly rejected her prayer to allow her to file a separate independent written statement. It may be stated at this stage that the certified copy of the order shows that the suit was fixed on 30th June, 1982 "for steps for hearing". However, Mr. B. Sarnia learned counsel for the opposite party submits that the suit is now posted for hearing arguments on 4-8-1982. This fact is also affirmed by Shri S. N. Medhi, learned counsel for the petitioner. Therefore, the suit which is now ready for argument and delivery of judgment, was about to be stalled by the application under Order 32 of the Civil P. C.

5. I have carefully perused the application of the petitioner under Order 32 read with Section 151 of the Code into the court of the first instance. I feel tempted to quote the relevant, statements of facts contained therein. The extract read as under:

"1. That defendant No. 9, Smt. Kalyanee Ghoso, has attained majority.

2. That defendant No. 9 was earlier represented by her mother Smt. Sandamini Ghose, defendant No. 2.

3. That the defendant No. 9 may kindly be allowed to enter appearance in the suit and to contest the same as she is vitally interested in the case and her right to property is in stake.

4. That the suit has not been properly contested, by her mother and her interest has not been properly protected in the suit.

5. That the defendant No. 9 wants to contest the suit by filing written statement in the case.

6. That your honour may be kind enough to allow the defendant No. 9 to enter appearance in the case through her Advocate, file written statement in the case by fixing a date preferably after a month from to-day, and the plaintiff may kindly be directed to supply a copy of the plaint to enable her to prepare written statement.

7. That the defendant No. 9 is a college student and she, has recently come to know about the suit and as such she could not file the application earlier.

8. That this application is made bona fide and in the interest of justice.

It is therefore, hereby prayed that your honour may be kind enough to allow the defendant No. 9 to enter appearance in the suit, to file written statement in the case and a date may kindly be fixed preferably after a month, in the meantime the plaintiff may be directed to supply a copy of the plaint to prepare written statement and may be pleased to pass such further or other order or orders as to your honour may deem fit and proper."

And the defendant No. 9 as in duty bound shall ever pray.

6. The application has been filed by the petitioner marked as Annexure-I. A glance at the application clearly shows that the mother of the petitioner had already filed a written statement on behalf of the petitioner as well. It will be seen that the petitioner herself admitted that in the proceedings she was represented by her own mother Defendant No. 2. The petitioner states that her mother did not "properly" contested the suit nor did she (her mother) "properly" protected the interest of the petitioner. I fail to get a grip of allegations. I fail to see how her own mother could go against her so as not to safeguard her interest. I enquired of the Counsel for the petitioner yesterday as to what were the shortfalls or omissions committed by her mother and the reasons why the petitioner alleged that her interest were not properly protected by her own mother. To obtain instructions I allowed time to the counsel for the petitioner. Today, Shri Medhi submits that he has nothing to add other than what have been stated in the application marked "Annexure-1".

7. Now, I find that the mother of the petitioner had filed a written-statement on her own behalf and on behalf of her child the petitioner. There is no material to show that the suit was not "properly" contested by defendant No. 2 and/or the interest of defendant No. 9 (the petitioner) was not "properly" protected. There is no material in support of the alleged improper contest or failure to safeguard the interest of the petitioner, either in the petition or stated before me by the learned counsel for the petitioner. I conclude that the allegations are all vague, ambiguous and nebulous. Therefore, her claim to file afresh a further written statement does not arise in the ejectment proceedings. It may be recalled that it is a case in which a valid written statement has already been filed on her behalf by no other person but her mother. Further, there exists no reasonable case to allow her "to congest the suit by filing written statement in the case", as claimed by her. She is fairly and squarely contesting the action and her case is being contested on her behalf by no other person but her own mother. As such, her interests are fully secured. Any indulgence, as asked for, would cause injustice. To provide speedy but deliberate justice is our Constitutional pledge, sluggish justice is antithesis of "decent and fair procedure" enshrined in our Constitution.

8. The wholesome provision of Section 115 of the Code is meant for preventing abuse of the process of the Court and to uphold the ends of justice. Surely, the ends of justice is loftier and more consequential than the ends of mere law, though justice must be administered according to law. But the ends of justice is not the

ends of justice. This court may exercise powers u/s 115 of the Code if a subordinate Court exercises jurisdiction not vested in it by law or, if it fails to exercise a jurisdiction so vested, or, acts in the exercise of its jurisdiction illegally or with material irregularity. However, the facts and circumstances of the case do not bring the case of the petitioner within the four corners of the section. Nor could the petitioner satisfy me that if the order had been passed in her favour it would have finally disposed of the suit or the proceedings. Further, I do not find any material that if the order is allowed to stand it would occasion a failure of justice or cause irreparable injury to the petitioner. I conclude that the project engineered was to stall the proceedings for a number of years. Therefore to uphold the cause of justice I dismiss the petition in limine.

9. At this stage Mr. Medhi, learned counsel for the petitioner prays that the petitioner might be allowed to engage her own lawyer to argue her case. As Mr. B. Sarma, learned counsel for the opposite party plaintiff concedes to the prayer. I direct that the petitioner may be allowed to engage her own lawyer to argue her case, if she makes such an application in writing in the Court of the first instance and her mother, defendant No. 2, agrees to the prayer. In any event the trial Court shall hear the counsel for defendant No. 2 and consider the argument advanced by the learned counsel already engaged by Defendant No. 2 to argue the case for and on behalf of the petitioner (Defendant No. 9) as well.

10. In the result the petition is dismissed with the above observations. However, I make no order as to costs. Send a copy of the order to the trial Court immediately.